

# 1999 ASSEMBLY BILL 748

1     **AN ACT relating to:** repealing, consolidating, renumbering, amending and  
2         revising various provisions of the statutes for the purpose of correcting errors,  
3         supplying omissions, correcting and clarifying references, and eliminating  
4         defects, anachronisms, conflicts, ambiguities and obsolete provisions (Revision  
5         Bill).

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*Analysis by the Legislative Reference Bureau*

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

NOTE: None of the changes made by this bill are intended to be substantive.

6         **SECTION 1.** 80.01 (1) (title) of the statutes is renumbered 80.01 (1m) (title) and  
7         amended to read:

8         **80.01 (1m)** (title) ~~VALIDATION OF HIGHWAYS, RECORDING.~~

NOTE: The majority of the text of s. 80.01 (1) is moved to s. 80.01 (1m) so that a definition can be properly located at the beginning of the section. See the next 2 sections of this bill.

9         **SECTION 2.** 80.01 (1) of the statutes is amended to read:

**ASSEMBLY BILL 748****SECTION 2**

1           80.01 (1) DEFINITION. ~~All highways laid out by the town supervisors, the county~~  
2 ~~board or by a committee of the board, or by commissioners appointed by the~~  
3 ~~legislature, or by any other authority, and recorded, any portion of which has been~~  
4 ~~opened and worked for 3 years are legal highways so far as they have been so opened~~  
5 ~~and worked. The filing of an~~ In this section, “recorded highway” means a highway  
6 for which the order laying out any the highway, or a certified copy thereof of the order,  
7 has been filed in the office of the clerk of the town or the county in which the highway  
8 is situated ~~is a recording of such highway within the meaning of this section.~~

NOTE: Separates a definition into a separate subsection in accordance with current style and reorders text to fit within the current format for a definition. The stricken language is moved to s. 80.01 (1m) by the next section of this bill.

9           **SECTION 3.** 80.01 (1m) of the statutes is created to read:

10           80.01 (1m) Any recorded highway that has been laid out by the town  
11 supervisors, the county board or by a committee of the board, or by commissioners  
12 appointed by the legislature, or by any other authority, any portion of which has been  
13 opened and worked for 3 years is a legal highway to the extent that it has been opened  
14 and worked. Any laid out highway that has not been fully and sufficiently described  
15 or recorded or for which the records have been lost or destroyed is presumed to be 66  
16 feet wide.

NOTE: The first sentence of this subsection is moved from s. 80.01 (1). The second sentence is moved from the end of sub. (2) as drafting records indicate that the presumption of width originally applies to this provision and is not needed in sub. (2) due to the insertion of the same presumption after the 1st clause in that subsection by ch. 70 of the Laws of 1949. The language of both sentences is reordered and modified from the original and “rods” is replaced by “feet” for improved readability and conformity with current style.

17           **SECTION 4.** 80.01 (2) of the statutes is renumbered 80.01 (2) (a) and amended  
18 to read:

19           80.01 (2) (a) ~~All highways not recorded which have~~ Except as provided in pars.  
20 (b) and (c), any unrecorded highway that has been worked as a public highways

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1 ~~highway for 10 years or more are is a public highways, highway and are is~~ presumed  
2 to be ~~4 rods 66 feet~~ wide, except that roads and bridges.

3 (b) No road or bridge built upon the bottoms and sloughs of the Mississippi  
4 River by citizens or ~~municipalities~~ a municipality of any other state shall ~~not~~ become  
5 a legal highways highway or a charge upon the town in which they are situated ~~the~~  
6 road is located unless upon petition ~~they are~~ the highway is legally laid out by the  
7 town supervisors; ~~nor shall any grant of.~~

8 (c) No lands granted for highway purposes, ~~which has that did~~ not become a  
9 legal highway prior to the ~~first day of July 1, 1913,~~ shall become effective for such  
10 purposes, a legal highway unless the grant is accepted by the town board or by the  
11 town meeting of the town wherein the lands and proposed highway are situated  
12 located, and until a resolution of such acceptance of the grant is recorded in the office  
13 of the town clerk; ~~and in case any such laid out highways have not been fully and~~  
14 ~~sufficiently described or recorded or if the records have been lost or destroyed the~~  
15 ~~presumption shall be that they were laid 4 rods wide.~~

NOTE: Subdivides long sentence, replaces “rods” with “feet”, changes from plural forms to the singular and otherwise reorders text for improved readability and conformity with current style. Par. (c) previously referred to a grant not becoming a highway when to be grammatically correct it should have referred to the granted lands not becoming highways and was written viewing July 1, 1913 prospectively. The language of par. (c) is adjusted accordingly.

16 **SECTION 5.** 80.04 (1) of the statutes is amended to read:

17 80.04 (1) No supervisor shall may act in laying out, altering, widening or  
18 discontinuing any highway in which the supervisor may be personally interested.  
19 If one supervisor is interested the other two 2 supervisors shall act; ~~if two.~~ If 2  
20 supervisors are interested the ~~third~~ 3rd supervisor shall act in the matter.

NOTE: Shortens sentences, replaces word form of numbers with digits and replaces language for greater readability and conformity with current style.

21 **SECTION 6.** 80.04 (2) of the statutes is amended to read:

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1           80.04 (2) Whenever there shall be less are fewer than two 2 supervisors in any  
2    a town, the petition application authorized by s. 80.02 may be made to the county  
3    board, which shall thereupon promptly appoint a committee of three 3 of its  
4    members. Said The committee shall proceed and act upon such petition the  
5    application in the same manner and with the same powers in every respect as the  
6    supervisors of such the town might do.

NOTE: Replaces word form of numbers with digits and replaces language for greater  
readability and conformity with current style.

7           **SECTION 7.** 80.08 of the statutes is amended to read:

8           **80.08 Width of highways.** Except as otherwise expressly provided by in s.  
9    80.13, highways shall be laid out at least ~~three rods~~ 49.5 feet wide, and when no width  
10   is specified in the order the highway shall be ~~4 rods~~ 66 feet wide.

NOTE: Replaces “rods” with a more common unit of measurement.

11          **SECTION 8.** 80.11 (1) of the statutes is amended to read:

12          80.11 (1) Whenever it shall be deemed is considered necessary to lay out, alter,  
13    widen or discontinue a highway upon the line between two 2 towns, or extending  
14    from one town into an adjoining town, it shall be done by the supervisors of said the  
15    2 towns acting together, ~~and if such.~~ If the highway is laid out or altered it may be  
16    either upon or as near to the town line ~~or as near thereto~~ as the situation of the  
17    ground will admit; ~~and they.~~ The supervisors of the 2 towns acting together may vary  
18    the same location on either ~~on one side or the other~~ of such the town line as they may  
19    deem consider to be necessary.

20          **SECTION 9.** 80.11 (2) of the statutes is renumbered 80.11 (2) (a) (intro.) and  
21    amended to read:

22          80.11 (2) (a) (intro.) The An application therefor under sub. (1) shall be in all  
23    of the following:

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1        1. In duplicate, addressed,

2        2. Addressed to the supervisors of both towns, ~~and be signed,~~

3        3. Signed by at least 6 resident freeholders in each town; ~~and be delivered~~

4        4. Delivered to a supervisor or the clerk of each town.

5        (b) Upon receipt of such an application under par. (a), the supervisors shall  
6 promptly fix a, and give notice of, the time when and place for deciding thereon, and  
7 ~~give notice thereof where the application will be decided.~~ The ~~notices of the time and~~  
8 ~~place of meeting~~ notice shall be signed all of the following:

9        1. Signed by a majority of the supervisors of each town, ~~and published,~~

10       2. Published as a class 2 notice, under ch. 985, in said each of the towns, ~~and~~  
11 ~~served,~~

12       3. Served as required by s. 80.05.

13       (c) A majority of the supervisors of each town shall meet jointly at the time and  
14 place named in the notice under par. (b) to decide upon such the application and to  
15 sign the order and the award of damages, ~~and in all other things the.~~ The proceedings  
16 shall be the same as ~~are required by law~~ in laying out, altering, widening or  
17 discontinuing highways located wholly within a one town. The orders, awards,  
18 notices and all papers shall be in duplicate, and one duplicate of each shall be filed  
19 with each town clerk, ~~and the.~~ The order shall be recorded in each town clerk's office.

20       **SECTION 10.** 80.11 (3) of the statutes is renumbered 80.11 (3) (a) and amended  
21 to read:

22       80.11 **(3)** (a) The said supervisors, ~~upon laying out, altering or widening such~~  
23 ~~highway may determine, in the order, what~~ under sub. (2) (c) may designate the part  
24 ~~of such~~ the highway that shall be made and kept in repair by each town, and what  
25 the share of the damages, if any, that shall be paid by each; ~~and each town.~~ Each town

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1 shall have all of the rights and be subject to the liabilities in relation to the part of  
2 such the highway to be made or repaired by it as if it were wholly located in such that  
3 town. ~~If no such apportionment shall have been made in the order laying out,~~  
4 ~~altering or widening such highway or any part thereof; or if such highway or any part~~  
5 ~~thereof shall have had its origin in user; or if in the judgment of said supervisors~~  
6 ~~circumstances have so altered since the last previous apportionment or~~  
7 ~~reapportionment of such highway or any part thereof as to render the same~~  
8 ~~inequitable or impracticable, a~~

9 (b) 1. (intro.) A majority of the supervisors of each town, meeting together, may  
10 make such an order in accordance with par. (a) apportioning or reapportioning such  
11 a town line highway or any part thereof as of the highway that they may deem  
12 consider advisable, which if any of the following conditions exists:

13 2. An order made under this paragraph shall be filed as ~~hereinbefore~~ provided.  
14 ~~When so made such order in sub. (2) (c) and shall be of~~ have the same force and effect  
15 as an order made in connection with the original laying out of such the highway.

16 (c) Any written order or agreement made before August 27, 1947 ~~made~~, by a  
17 majority of the supervisors of each town concerned, acting together, apportioning or  
18 reapportioning a town line highway is ~~hereby validated and shall be of~~ has the same  
19 ~~force and effect as though made on or after said date. Where flowage crosses and~~  
20 ~~covers a portion of a town line road, then that part of such order which previously~~  
21 ~~fixed their respective liabilities shall be deemed vacated~~ August 27, 1947.

22 **SECTION 11.** 80.11 (3) (b) 1. a., b. and c. of the statutes are created to read:

23 80.11 (3) (b) 1. a. No apportionment has been made in an order laying out,  
24 altering or widening the highway or a part of the highway.

25 b. The highway or a part of the highway had its origin in user.

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1 c. In the judgment of the supervisors circumstances have been so altered since  
2 the last apportionment of the highway or part of the highway that the apportionment  
3 or reapportionment has been rendered inequitable or impracticable.

4 **SECTION 12.** 80.11 (4) of the statutes is renumbered 80.11 (4) (a) (intro.) and  
5 amended to read:

6 80.11 **(4)** (a) (intro.) ~~If by any change of the boundaries of either or both such~~  
7 ~~towns including that caused by flowage the~~ The part of an order fixing the liabilities  
8 of towns in regard to a town line highway is vacated if any of the following occurs:

9 1. The territory of either shall be town is increased or diminished, or in the  
10 event a by a change of the boundaries of either town including a change caused by  
11 flowage.

12 2. A portion of said the town line highway is or has been taken over by the state  
13 or county under the state or county highway system, or if a.

14 3. A new town or village be is formed out of a part of the territory of either or  
15 both of said the towns, having a portion of such the town line highway within its  
16 borders or if a.

17 4. A portion of a town line road highway is crossed and covered by flowage, that  
18 part of such order fixing their liabilities shall be deemed vacated, and a.

19 (b) 1. In the event that an order or part of an order is vacated under par. (a) 1.,  
20 2. or 4., a majority of the supervisors of each such town that is party to the order shall,  
21 before the time for making the next tax roll, meet together with a majority of the  
22 supervisors of such new town or with the president of such village, and all of them  
23 when so convened shall, if they can agree, and attempt to make a new order  
24 apportioning the liabilities on account of such the highway, which shall be filed as  
25 hereinbefore provided in sub. (2) (c).

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NOTE: Subdivides provision, reorders text and moves stricken material to a separate subdivision for greater readability and conformity with current style. See the next section of this bill.

**SECTION 13.** 80.11 (4) (b) 2. of the statutes is created to read:

80.11 **(4)** (b) 2. In the event that an order or part of an order is vacated under par. (a) 3., a majority of the supervisors of each town that is party to the order shall, before the time for making the next tax roll, meet together with a majority of the supervisors of the new town or with the president of the new village and attempt to make a new order apportioning the liabilities on account of the highway, which shall be filed as provided in sub. (2) (c).

NOTE: Recreates language to reposition text in s. 80.11 (4). See the previous section of this bill.

**SECTION 14.** 80.11 (5) of the statutes is amended to read:

80.11 **(5)** ~~If they fail to make such order~~ no agreement is reached under sub. (4) (b), or if the an order laying out, altering or widening such a town line highway ~~shall~~ has not have apportioned the liability of the towns or village on account of ~~such the~~ highway, the supervisors of ~~either~~ an affected town or the president of ~~said an~~ affected village, after ~~ten 10~~ days' notice of the time and place of ~~so doing~~ hearing served on the clerk of each town and village to be affected, may apply to the circuit judge of the county in which ~~such towns and village or the~~ affected town or village ~~on whose behalf such notice is given~~ is located, for the appointment of ~~three 3~~ commissioners to apportion the liabilities of ~~such towns~~ each affected town and village on account of ~~such the town line~~ highway.

**SECTION 15.** 80.11 (6) and (7) of the statutes are amended to read:

80.11 **(6)** Upon ~~proper~~ application ~~such~~ under sub. (5), the circuit judge shall appoint ~~three 3~~ residents of ~~such the~~ county as commissioners. ~~They~~ The commissioners shall ~~proceed~~, on not less than ~~five 5~~ days' notice in writing to the



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1 ~~clerk of each town and village clerks, to make such apportionment, and their affected,~~  
2 ~~apportion the liabilities of each affected town and village on account of the highway.~~  
3 ~~The commissioners shall make the determination shall be made in writing and filed~~  
4 ~~shall file the determination~~ with the clerk of each town and village affected, ~~and shall~~  
5 ~~have. The commissioners' determination has~~ the same force and effect as an order  
6 of the supervisors, and the village president made under sub. (2), (3) or (4).

7 (7) Any bridge on a highway that became a highway under s. 80.01 (2) as a  
8 result of having been worked, that is between two 2 towns, or between a town on one  
9 side and a village or a town and village on the other side, ~~which highway has become~~  
10 ~~such by reason of having been used and worked as provided in s. 80.01 (2), which~~  
11 ~~bridge and that~~ has not been assigned to either of the adjoining towns or village, shall  
12 be repaired and maintained by such the adjoining towns and village, ~~and the. The~~  
13 cost of repairs and maintenance shall be paid by ~~them~~ the adjoining towns and  
14 village in proportion to the valuation of the property ~~therein~~ in the adjoining towns  
15 and village as equalized by the county board or boards at the last equalization.

16 **SECTION 16.** 80.11 (8) of the statutes is renumbered 80.11 (8) (a) and amended  
17 to read:

18 80.11 (8) (a) Unless Except as provided in par. (b) and sub. (7) or unless  
19 otherwise provided by statute or agreement, every highway bridge on a town, village  
20 or city boundary shall be maintained by the municipalities in which it the bridge is  
21 located, each contributing to the expenses thereof in proportion to the last  
22 assessment of taxable property therein. ~~Provided, however, that any~~

23 (b) Any bridge, or bridges, over any stream or river forming the boundary line  
24 between two 2 counties erected or maintained solely by one of the adjoining  
25 municipalities, may be closed or discontinued by such the municipality so

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maintaining the same when such bridge if the other adjoining municipality shall fail  
fails to cooperate in such contribute towards the maintenance in of the bridge in the  
following proportion:

1. In proportion to the amount of the cost thereof of erecting the bridge borne  
by said the adjoining municipality that does not maintain the bridge, if the bridge  
was erected at the joint expense of the two 2 adjoining municipalities; or, if not so  
erected, then in.

2. In the proportion of one-half the cost of such maintenance, if the bridge was  
not erected at joint expense.

NOTE: Subdivides provision, reorders text, deletes redundancies, replaces word  
form of numbers with digits and replaces language for greater readability and conformity  
with current style.

**SECTION 17.** 80.12 of the statutes is renumbered 80.12 (1) amended to read:

80.12 (1) Whenever it is deemed considered necessary to lay out, alter, widen  
or discontinue a highway upon the line between a town and city or village or to lay  
out, alter, widen or discontinue a highway or any part thereof of a highway extending  
from a town to a city or village, the proceedings therefor may be had under s. 80.11.  
The application therefor to lay out, alter, widen or discontinue the highway or any  
part of the highway shall be in duplicate, addressed to the supervisors of the town  
and the common council of the city or the board of trustees of the village, and be  
signed by at least 6 freeholders of the town and 6 freeholders of the city or village.  
Thereupon such

(2) Upon receipt of an application under sub. (1), the common council or board  
of trustees shall appoint 3 commissioners on the part of such the affected city or  
village, who. The commissioners shall be duly sworn to faithfully discharge their  
duties as such commissioners before entering on the same. Such upon those duties.

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1     The commissioners and town supervisors shall then give notice and proceed in all  
2     respects as provided in s. 80.11; ~~and such.~~

3             ~~(3) The city or village shall be in like manner as a town responsible for that part~~  
4     of such ~~the affected~~ highway ~~determined to that, under s. 80.11 (3 (a) shall~~ be made  
5     and kept in repair by the same city or village and for the share of damages assigned  
6     to the ~~same city or village under s. 80.11 (3) (a).~~ The cost of repairs, improvement and  
7     maintenance of any highway laid out on a line between a city and a town or village  
8     or located on one or the other side of the line may be at the expense of such ~~the~~  
9     adjoining municipalities and the apportionment may be made as provided in s. 80.11  
10    (3) to (6).

11            ~~(4) The town board, and village board and or city council may cause any such~~  
12    highway or ~~any part of such a highway subject to the provisions of this section, which~~  
13    is not less than ~~16 rods~~ 264 feet in length, to be graded, paved, macadamized or  
14    otherwise improved, including the establishment of the grade ~~and the,~~ construction  
15    of the curbs and gutters, and installation of water and sewer mains and service pipes,  
16    ~~or either, and.~~ The town board and village board or city council may levy special  
17    assessments for the whole or any part of the cost thereof ~~of the improvements~~ as a  
18    tax upon such ~~the~~ property as ~~that~~ they shall determine as is especially benefited  
19    ~~thereby by the improvements,~~ in the manner provided in s. 66.60.

20            ~~(5) All proceedings and orders required to be filed and recorded shall be filed~~  
21    and recorded in the office of the clerk of the affected city ~~or,~~ village clerk ~~as well as~~  
22    ~~in the office of the or town clerk.~~

NOTE: Subdivides provision, replaces “rods” with a more common unit of  
measurement and replaces other language for greater readability and conformity with  
current style.

**SECTION 18.** 80.13 (1) of the statutes is amended to read:

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1           80.13 (1) When any person shall ~~present to~~ presents the supervisors of any  
2   town board with an affidavit satisfying them that ~~that person is the~~ that meets the  
3   requirements under sub. (1m), the town board shall set a time and place to conduct  
4   a hearing regarding the laying out or widening of a highway. The hearing shall be  
5   held after 10 days and within 30 days of the receipt of the affidavit by the town board.  
6   Notice of the time and place of the hearing shall be served as required by s. 80.05 and  
7   published as a class 2 notice under ch. 985.

8           (1m) The affidavit required under sub. (1) shall be executed by the owner or  
9   lessee of real estate (describing the same) located within said the town, shall contain  
10   a description of the affected real estate and that the same shall contain facts that  
11   satisfy the supervisors that any of the following circumstances exists:

12           (a) The real estate described in the affidavit is shut out from all public  
13   highways, other than a waterway, by being surrounded on all sides by real estate  
14   belonging to owned by other persons, or by such real estate owned by other persons  
15   and by water, or that that person is the owner or lessee of real estate (describing the  
16   same) and that the owner or lessee is unable to purchase a right-of-way to a public  
17   highway from the owners of the adjoining real estate or that such a right-of-way  
18   cannot be purchased except at an exorbitant price, which price shall be stated in the  
19   affidavit.

20           (b) 1. The the owner or lessee is the owner of a private way or road leading,  
21   whose width shall be stated in the affidavit, that leads from said the described real  
22   estate to a public highway but that such the way or road or way is too narrow, giving  
23   its width, to afford that person the owner or lessee reasonable access to and from said  
24   the described real estate to said the public highway, that that person; and

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1        2. The owner or lessee is unable to purchase from any of said persons the a  
2        right-of-way over or through the same from the described real estate to a public  
3        highway, or that that person is unable to purchase from the owner or owners of land  
4        on either or both sides of that person's the owner's or lessee's way or road land to  
5        make such the way or road of sufficient width, or that it the right-of-way or  
6        additional land cannot be purchased except at an exorbitant price, stating the lowest  
7        which price for which the same the can be purchased, the said supervisors shall  
8        appoint a time and place for hearing said matter, which hearing shall be after ten  
9        days and within thirty days of the receipt of said stated in the affidavit.

10        **SECTION 19.** 80.13 (2) of the statutes is repealed.

NOTE: The text of sub. (2) is made a part of sub. (1). See the previous section of this  
bill.

11        **SECTION 20.** 80.13 (3) of the statutes is renumbered 80.13 (3) (a) and amended  
12        to read:

13        **80.13 (3) (a)** The supervisors town board shall meet at the appointed time and  
14        place stated in the notice given under sub. (1) and shall then in their discretion  
15        proceed to lay out such a highway of not more than three nor less than two rods 33  
16        feet nor more than 49.5 feet in width from the public highway to such the real estate,  
17        described in the affidavit under sub. (1) (a) or (b) by either laying out a new highway  
18        across the surrounding land or shall add by adding enough land to its the width of  
19        the existing way or road described in the affidavit under sub. (1) (b) to make it not  
20        less than two 33 feet nor more than three rods 49.5 feet in width, and.

21        (b) The town board shall assess the damages to the owner or owners of the real  
22        estate over or through which the same highway shall be laid or from whom land shall  
23        be taken and the advantages to the applicant. The town board may not assess  
24        damages in any amount exceeding the price stated in the affidavit of the applicant.

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NOTE: Moves sentence regarding the award of damages from sub. (4) to sub. (3) for more appropriate placement. Reorders text, replaces “rods” with a more common unit of measurement and replaces other language for greater readability and conformity with current style.

**SECTION 21.** 80.13 (4) of the statutes is amended to read:

80.13 (4) ~~But the damages assessed by the supervisors shall in no case exceed the price stated in the affidavit of the applicant; upon~~ Upon laying out such a highway, ~~or in adding to the width of a former private way or road, they~~ under sub. (3), the town board shall make and sign an order describing the same laid out highway and file the same order with the town clerk together with their its award of damages, ~~which.~~ The order shall be recorded by said the clerk; provided, that the amount assessed as advantages to the applicant shall be under sub. (3) is paid to the town treasurer before the order laying out such highway shall be filed.

NOTE: Moves sentence regarding the award of damages from sub. (4) to sub. (3) for more appropriate placement. Divides provision into multiple sentences and replaces language for greater readability and conformity with current style.

**SECTION 22.** 80.13 (5) of the statutes is amended to read:

80.13 (5) Whenever a parcel of land in any town which is accessible, or provided with a right-of-way to a public highway, is subdivided and the owner thereof ~~sells and transfers a~~ any part thereof or sells a of the subdivided parcel of said land by metes and bounds, which part or parcel that would otherwise be landlocked and shut out from all public highways ~~other than a waterway,~~ by reason of being surrounded on all sides by real estate belonging to other persons or by such real estate belonging to other persons and by water without an adequate right-of-way to a public highway, the seller shall ~~in so subdividing said land or a part thereof or in selling a parcel of said land by metes and bounds~~ provide a cleared right-of-way at least 50 feet in width which that shall be continuous from the highway to each the part, parcel, lot or of the subdivision sold. In case the seller fails to ~~do so~~ provide the required

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1 right-of-way, the town board may, pursuant to proceedings under this section, lay  
2 out a road from such the inaccessible land to the public highway over the remaining  
3 lands of the seller without assessment ~~to the latter~~ of damages or compensation  
4 therefor to the seller.

NOTE: Deletes redundant language and inserts specific references.

5 **SECTION 23.** 80.23 of the statutes is amended to read:

6 **80.23 Removal of fences from highway; notice.** (1) Whenever pursuant  
7 to this chapter, any highway is laid out, widened or altered through ~~inclosed~~  
8 enclosed, cultivated or improved lands and the determination has not been appealed  
9 from, the highway authorities shall give the owner or occupant of such the lands  
10 written notice ~~in writing~~ to remove the fences located ~~thereon~~ on the highway within  
11 such a time as they shall deem determined by the highway authorities to be  
12 reasonable, but not less than 30 days after giving such the notice; ~~and if,~~ If the owner  
13 or occupant does not remove the fences within the time required ~~in such~~ by the notice,  
14 the highway authorities shall ~~cause~~ remove the fences ~~to be removed~~ and shall direct  
15 the highway to be opened; ~~but if,~~ If the determination has been appealed from, the  
16 notice shall be given after the final decision of the appeal.

17 (2) This section does not authorize the opening of a highway through such  
18 enclosed, cultivated or improved lands or the removal of fences between May 15 and  
19 September 15, except in cases of emergency to be determined by the highway  
20 authorities.

NOTE: Divides long sentence and replaces language for greater readability and  
conformity with current style.

21 **SECTION 24.** 80.24 (1) and (2) of the statutes are amended to read:

22 **80.24 (1)** Except as provided in sub. (2), an owner of lands through which a  
23 highway is laid out, widened, altered or discontinued who is not satisfied with the



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1 award of damages under s. 80.09 may, within 30 days after the filing of the award,  
2 appeal to the circuit judge court of the county for a jury to assess the damages.

3 (2) An owner of lands through which a highway is laid out, widened, altered  
4 or discontinued who has appealed under s. 80.17 from the order laying out, widening,  
5 altering or discontinuing the highway and who is not satisfied with the award of  
6 damages under s. 80.09 may, within 30 days after the entry of a final order on the  
7 appeal affirming the order, appeal to the circuit judge court of the county for a jury  
8 to assess the damages.

9 **SECTION 25.** 80.24 (5) (intro.) and (a) of the statutes are consolidated,  
10 renumbered 80.24 (5) and amended to read:

11 80.24 (5) The At least 6 days before making an appeal under this section, the  
12 appellant shall serve written notice on 2 of the supervisors of the town in which the  
13 highway is situated, or upon 2 or more of the supervisors or commissioners of the  
14 town, city or village ~~who have been assigned the duty of~~ responsible for paying the  
15 damages for the land, ~~at least 6 days before making the appeal, a.~~ The notice in  
16 writing, specifying the following: (a) The shall state the name of the judge to whom  
17 the appeal will be made and the date, time and place at which the appeal will be  
18 heard.

19 **SECTION 26.** 80.24 (5) (b) and (c) of the statutes are repealed.

20 **SECTION 27.** 80.25 of the statutes is renumbered 80.25 (1) and amended to read:

21 80.25 (1) Any taxpayer of a ~~town or other~~ municipality in which a highway is  
22 laid out, altered or discontinued or any part thereof is situated, and which is required  
23 to pay damages resulting ~~therefrom~~ from the laying out, alteration or  
24 discontinuation, may appeal, within 30 days after the award or agreement  
25 determining the damages has been filed with the ~~town, city or village~~ municipal



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1 clerk, appeal to the circuit judge court of the county for a jury to assess the damages  
2 sustained by the persons to whom damages were awarded or are to be paid.

3 **(2)** The appeal under this section shall be in writing, describing the premises  
4 and naming the persons to whom damages are to be paid, and the amount awarded  
5 to each, and, unless appealing from all of the awards, shall specify the particular  
6 award from which the taxpayer appeals ~~in case he or she does not appeal from all~~.  
7 The appellant shall serve written notice of the appeal upon 2 of the supervisors of the  
8 town or ~~upon 2 of the commissioners of the city or village to which has been assigned~~  
9 ~~the duty of~~ that is responsible for paying the damages and upon the persons whose  
10 awards are appealed from.

11 **(3)** The notice under sub. (2) shall be served at least 6 days before ~~making the~~  
12 ~~appellant makes the application, a notice in writing specifying therein for the jury~~  
13 ~~to assess damages. The notice shall state the name of the judge to whom and who~~  
14 ~~will hear the application and the time and place appellant will apply for the selection~~  
15 of the jury hearing.

NOTE: Subdivides provision, reorders and replaces language for greater readability  
and conformity with current style and consistency with s. 80.24. See the previous section  
of this bill.

16 **SECTION 28.** 80.26 of the statutes is amended to read:

17 **80.26 Appeal bond.** The appellant under s. 80.24 or 80.25 shall execute to the  
18 proper town, city or village and file with the judge circuit court a bond with one or  
19 more sureties to be approved by such judge the circuit court. In case the appeal is  
20 by a landowner, the bond shall be conditioned to pay all costs arising from such the  
21 appeal if the jury ~~shall~~ does not award the appellant an increase of damages. In case  
22 of an appeal by a taxpayer as such under s. 80.25, the bond shall be conditioned that  
23 the appellant shall pay all costs arising from such the appeal if the amount of

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1 damages in the aggregate of the items appealed from shall is not be diminished upon  
2 as a result of the appeal.

NOTE: Inserts cross-references and replaces language for greater clarity and  
conformity with current style.

3 **SECTION 29.** 80.27 of the statutes is renumbered 80.27 (1) (intro.) and amended  
4 to read:

5 80.27 (1) (intro.) Upon the filing of the bond required under s. 80.26 and notice  
6 of the appeal with proof of service thereof of the notice, the jury shall be selected and  
7 summoned in the following manner:

8 (a) The judge shall make out a list of 15 disinterested resident freeholders of  
9 the county, not of kin to the owner or occupant of the lands.

10 (b) Each party in turn shall strike 5 persons from such the list, and if none of  
11 the proper supervisors or commissioners or other appellee is present, the judge shall  
12 strike off the 5 names for them, and the any missing party.

13 (c) The judge shall thereupon issue an order to the sheriff or some a constable  
14 of the county to summon the 5 persons named in such list and whose names were not  
15 stricken off to under par. (b) to meet at a time and place to be specified in such the  
16 order to appraise the damages, the award of which has been appealed from.

17 (2) In case any juror fails to appear at the time and place fixed for their the  
18 meeting under sub. (1) (c), the judge shall summon another juror shall be summoned  
19 in the missing juror's place.

20 (3) Any juror may be excused for good cause, and if any. Any juror duly who  
21 is summoned and under sub. (1) (c), is not excused and fails to serve that juror shall  
22 forfeit not to exceed \$10, and shall be liable to the party having the costs of the appeal  
23 to pay for additional costs made in consequence of such resulting from the juror's  
24 failure to serve.

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NOTE: Subdivides provision, inserts cross-references and replaces language for greater clarity and conformity with current style.

**SECTION 30.** 80.28 of the statutes renumbered 80.28 (1) and is amended to read:

**80.28 (1)** The jury selected under s. 80.27 shall be sworn by the judge to justly and impartially to make such appraisal, and appraise the damages, the award of which is appealed from. The jury shall ~~proceed to view such the~~ highway, subject to the appealed order, and hear the statements and proofs of the parties, ~~and such.~~ The jury may increase or ~~diminish~~ decrease the amount awarded, and they shall make sign and return of their the jury's appraisal to the judge ~~signed by them; and in.~~

**(2) (a)** ~~In case of appeal by a landowner if the jury shall increase the award under s. 80.24,~~ the costs and expenses of the proceedings shall be paid by the proper town, city or village; ~~but if the jury shall not increase the award the costs and expenses shall be paid by the appellant, and in~~ if the jury increases the amount awarded or by the appellant if the jury does not increase the amount awarded.

**(b)** ~~In case of an appeal by a taxpayer if the award appealed from is diminished,~~ the costs and expenses of the proceedings shall be paid by the town, city or village, ~~otherwise if the jury decreases the amount awarded or by the appellant if the jury does not decrease the amount awarded.~~

**(c)** In case of cross-appeals if the damages involved therein are unchanged, each appellant shall pay ~~half~~ 50% of said ~~the~~ costs and expenses of the proceedings.

**(3)** If the jury shall ~~fail~~ fails to agree and be ~~is~~ discharged by the judge for that reason, the judge shall immediately ~~proceed to make~~ select another list of such ~~freeholders, jury under this section and s. 80.27 (1) and further proceedings shall be had thereon~~ on the appeal under s. 80.27 and this section in all respects as in the case of a first jury.

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1        ~~(4)~~ (a) When the jury ~~shall have made a return of their~~ has returned its  
2 appraisal to the judge, the judge shall adjust the costs and expenses of such the  
3 proceedings, and within 10 days thereafter return such the appraisal to the town  
4 clerk, together with all the other following, which shall be filed by the clerk:

5            1. All papers relating to such the appeal, a.

6            2. A statement of the proceedings had before the judge, and.

7            3. A detailed statement of the cost and expenses in detail, duly of the  
8 proceedings certified by the judge, which shall be forthwith filed by the clerk; and if  
9 two.

10        (b) If 2 towns or a town and a city or village be are interested, the judge shall  
11 make and file a certified copy of the appraisal papers and statements with the clerk  
12 of such other each interested town, city or village.

NOTE: Subdivides provision, inserts cross-references, replaces word form of  
number with digits and replaces language for greater clarity and conformity with current  
style.

13        **SECTION 31.** 80.29 of the statutes is amended to read:

14        **80.29 Appeal costs; jurors' fees.** Each juror who serves under s. 80.28 shall  
15 receive \$3 for services and 10 cents a mile for actual and necessary travel in going  
16 to and returning from the place of meeting, Costs under this section are payable in  
17 advance by the party appealing, and ~~to be~~ are a charge against the party finally liable  
18 for the costs of the proceeding.

NOTE: Inserts cross-reference for greater clarity.

19        **SECTION 32.** 80.32 (4) of the statutes is renumbered 80.32 (4) (a) (intro.) and  
20 amended to read:

21        80.32 (4) (a) (intro.) Whenever any public highway or public ground has been  
22 vacated or discontinued ~~the,~~ any easements and rights incidental thereto acquired  
23 by or belonging to any county, school district, town, village or city or to any utility or

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1 person ~~in and relating to~~ any underground or overground structures, improvements  
2 or services and all rights of entrance, maintenance, construction and repair of the  
3 same structures, improvements or services shall continue, unless one of the following  
4 applies:

5 1. The owner of the easements and incidental rights gives written consent to  
6 the discontinuance of such the easements and rights ~~by the owner thereof is as~~ a part  
7 of the vacation or discontinuance proceedings and reference ~~thereto is made in the~~  
8 vacation or discontinuance resolution, ordinance or order, ~~or discontinued by failure~~  
9 refers to the owner's written consent.

10 2. The owner of the easements and incidental rights fails to use the same  
11 easements and rights for a period of 4 years from the time that the public highway  
12 or public ground was vacated or discontinued. ~~Upon the failure of the interested~~  
13 ~~parties to reach an agreement permitting discontinuance of such~~

14 (b) (intro.) The easements and incidental rights ~~or upon refusal of the owner~~  
15 ~~of such easements and rights to give written consent to the discontinuance thereof,~~  
16 ~~such easements and rights~~ described in par. (a) may be discontinued in the vacation  
17 or discontinuance proceedings in any case where benefits or damages are to be  
18 assessed as herein provided. in par. (c), if one of the following applies:

19 (c) Damages for the discontinuance of such the easements and rights, ~~in the~~  
20 described in par. (a) shall be assessed against the land benefited in the proceedings  
21 for assessment of damages or benefits upon the vacation or discontinuance of the  
22 public highway or public ground. The amount of the damages shall be the present  
23 value of the property to be removed or abandoned, plus the cost of removal, less the  
24 salvage thereon value of the removed or abandoned property, or in such any other  
25 amount as that may be agreed upon between the interested parties, ~~shall be assessed~~

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1 against the land benefited in the proceedings for assessment of damages or benefits  
2 upon the vacation or discontinuance of the public highway or public ground. The  
3 owner of such the easements and incidental rights, upon application to the treasurer  
4 and upon furnishing satisfactory proof shall be entitled to any payments of or upon  
5 such the assessment of damages.

6 (d) Any person aggrieved by such the assessment of damages under this  
7 subsection may appeal therefrom the assessment in the same time and manner as  
8 is provided for appeals from assessments of damages or benefits in vacation or  
9 discontinuance proceedings in the town, village or city.

NOTE: Subdivides provision, repositions text and deletes redundant and outdated  
language for greater readability and conformity with current style.

10 **SECTION 33.** 80.32 (4) (b) 1. and 2. of the statutes are created to read:

11 80.32 (4) (b) 1. The interested parties fail to reach an agreement permitting  
12 discontinuance of the easements and incidental rights.

13 2. The owner of the easements and incidental rights refuses to give written  
14 consent to their discontinuance.

NOTE: Recreates language to reposition text in s. 80.32 (4). See the previous section  
of this bill.

15 **SECTION 34.** 80.37 of the statutes is renumbered 80.37 (1) and amended to read:

16 80.37 (1) Whenever the record of the laying out of any highway ~~has been or~~  
17 ~~shall be~~ is lost or destroyed, the supervisors of the town in which such the highway  
18 is situated located, upon notice being served on all interested parties in accordance  
19 with s. 80.05, may make a new record thereof ~~by a written order, which shall be~~  
20 ~~entered on the town records. Whenever the supervisors shall contemplate making~~  
21 ~~such new record they shall make a~~ of the highway. The notice and shall fix therein  
22 a the time when and place at which they where the supervisors will meet and decide  
23 upon the same, which making the new record. The notice shall specify as near as may

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1 be the highway as to ~~for~~ which they ~~propose to make such~~ the proposed record. ~~Such~~  
2 ~~notice shall be served as provided by s. 80.05; but notice will be made.~~ Notice need  
3 not be given to such persons as who waive the same notice or consent to the making  
4 of the order either before or after it is entered.

5 **(2)** The supervisors shall meet pursuant to the notice given under sub. (1) and  
6 hear any arguments or evidence that may be offered for or against the proposed new  
7 record, and ~~thereupon decide~~ make a new record as they deem consider proper. ~~They~~  
8 The supervisors may adjourn from time to time, and an entry of each adjournment  
9 shall be made in the record by the town clerk. If they the supervisors find that the  
10 highway is a legal one highway the record whereof of which is lost or destroyed, they  
11 shall make ~~an~~ a written order ~~determining such~~ stating those facts and specifying  
12 the course, width and other pertinent description of the highway, ~~and such.~~ The  
13 order shall be filed and recorded in the office of the town clerk, who shall note the time  
14 of recording it the order in the record. Any number of highways may be included in  
15 one such notice or order, ~~and a~~ under this section. A failure or refusal to make a new  
16 record for any highway ~~shall~~ does not preclude a subsequent proceeding for that  
17 purpose.

18 **(3)** Any person through whose land ~~such a~~ highway shall ~~pass~~ described in an  
19 order entered under sub. (2) passes may appeal from such the order on the ground  
20 that the highway described therein in the order was not theretofore a legal highway  
21 in fact. The appeal shall be made in the time and manner provided for appealing from  
22 orders laying out highways, and like proceedings, ~~as near as may be,~~ shall be had  
23 thereon on the appeal as in case of appeals from such orders. ~~The~~ laying out  
24 highways. No person may call into question the regularity of such proceedings shall  
25 ~~not be called in question by any person~~ under this section except owners of land on



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whom such notice should have been served but ~~on whom it was not in fact served, was~~  
not and persons claiming under such those owners.

NOTE: Subdivides provision, repositions text, inserts specific references and cross-references and deletes redundant and outdated language for greater readability and conformity with current style.

**SECTION 35.** 80.48 (3) of the statutes is renumbered 80.48 (3) (a) and amended to read:

80.48 (3) (a) At the time and place specified in the notice given under sub. (2). the circuit judge of the county, the president of the village or the chairperson of the town in which the land sought to be taken lies shall issue a precept directed to the sheriff of the county or to any constable, naming the sheriff or constable, ~~which.~~ The precept shall direct the ~~officer to write~~ sheriff or constable to make a written list containing the names of 36 freeholders of the county who are qualified to serve as jurors in the circuit court and to return the list. After being sworn to perform the duties required to the best of his or her ability, without partiality, the ~~officer~~ sheriff or constable shall immediately ~~write the names~~ make and deliver the list thereof to the officer who issued the precept; ~~and from.~~

(b) From the list made under par. (a), each party, in person or by an agent or attorney, commencing with the petitioner, shall in turn ~~strike out alternately,~~ a name from the list until each has stricken 12 names, ~~and if.~~ If either party is absent or refuses to strike out the names, the officer who issued the precept shall appoint some person to strike 12 names for the absent or nonparticipating person. The officer shall then summon the 12 persons whose names remain on the list in the manner prescribed under s. 756.05 to appear at the time and place mentioned in the summons for the purpose of determining the necessity of taking for the public use the land described in the petition; ~~if.~~ If any of the persons summoned fail to attend others



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1 may be selected in the same ~~mode~~ manner to fill the vacancy, and for that purpose  
2 the proceedings may be adjourned from time to time.

3 (c) When 12 persons ~~are thus~~ have been secured in accordance with par. (b),  
4 they shall be sworn by the officer who issued the precept to faithfully and impartially  
5 discharge the duties imposed upon them, ~~which.~~ The oath shall be filed with the city,  
6 village or town clerk.

7 (d) The number of persons listed and summoned shall be proportionately  
8 reduced if the jury is to consist of a number less than 12.

NOTE: Subdivides provision, shortens sentences, reorders text, inserts  
cross-references, and replaces language for greater readability and conformity with  
current style.

9 **SECTION 36.** 80.48 (4) of the statutes is renumbered 80.48 (4) (a) and amended  
10 to read:

11 80.48 **(4)** (a) After the jurors selected under sub. (3) are sworn, the circuit or  
12 municipal judge, president or chairperson shall issue his or her precept directed to  
13 them and requiring that within 10 days they shall view the land specified ~~therein and~~  
14 ~~make return to him or her under their hands~~ in the precept and issue a decision,  
15 signed by each juror, as to whether it is necessary to take it the land for public use  
16 as described in the petition; ~~the.~~ The jurors shall, at a time to be fixed by them, view  
17 the premises; ~~the.~~ The parties interested shall have notice of the time of, and may  
18 offer to the jury any evidence pertinent to, the inquiry; ~~after.~~ After viewing the  
19 premises and hearing the evidence the jury shall determine whether a necessity  
20 exists for taking the land and shall return their its verdict to the officer who issued  
21 the precept.

22 (b) On the receipt thereof of the jury's verdict, the officer shall, as soon as may  
23 be possible, submit the ~~same~~ verdict to the council, trustees or supervisors, and for

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1 that purpose may call a meeting of either body and deliver the verdict to them; ~~the~~  
2 The body to which it the verdict is so delivered shall, if in ~~their~~ its judgment the public  
3 good requires it, immediately make an order laying out a street or highway from the  
4 nearest street or highway which can be used as a convenient means of approach to  
5 the cemetery, fairground or land used for industrial expositions. The street or  
6 highway so laid shall not be less than 3 49.5 feet nor more than 4 ~~rods~~ 66 feet in width,  
7 and.

8 (c) The body issuing the order under par. (b) shall, in the order ~~they shall,~~  
9 appoint 3 disinterested residents of the county as commissioners ~~who.~~ The  
10 commissioners shall, after notice to the owners or occupants of the land and after  
11 being sworn to support the U.S. constitution ~~of the United States~~ and the  
12 constitution of this state and faithfully discharge their duties to the best of their  
13 ability, assess adequate damages to the owners of the land through which the street  
14 or highway is laid. The award of damages shall be signed by the commissioners and  
15 be returned to the city, village or town clerk.

NOTE: Subdivides provision, shortens sentences, inserts cross-references, replaces  
“rods” with a more common unit of measurement and replaces other language for greater  
readability and conformity with current style.

16 **SECTION 37. 80.48** (5) of the statutes is amended to read:

17 **80.48 (5) OPENING HIGHWAY.** The street commissioner of ~~such~~ the city or village  
18 or the superintendent of highways of ~~such~~ the town, ~~after who made the order under~~  
19 sub. (4) laying out such the street or highway has been filed, upon the filing of the  
20 order with the city, village or town clerk, shall ~~forthwith~~ immediately open the street  
21 or highway ~~so laid~~, provided that the petitioner shall have paid to the city, village or  
22 town treasurer the damages awarded.

NOTE: Replaces language and inserts a cross-reference for greater readability and  
conformity with current style.

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1           **SECTION 38.** 80.48 (6) of the statutes is renumbered 80.48 (6) (a) and amended  
2 to read:

3           80.48 **(6)** (a) ~~If any~~ Any person through whose land ~~such a~~ street or highway  
4 is laid or the petitioner shall be may, if dissatisfied with the damages awarded either  
5 may under this section, appeal to the circuit court of the county in which the land is  
6 situated located. The appeal is commenced by serving a notice of appeal and  
7 undertaking upon the opposite party, with at least ~~two~~ 2 sureties, conditioned for the  
8 payment of all costs and damages which may be incurred if the appellant ~~shall~~ does  
9 not succeed; ~~such.~~ The notice and undertaking shall be filed with the city, village or  
10 town clerk, who shall be entitled to receive ~~two dollars~~ \$2 for fees in making return  
11 to the clerk of the circuit court as hereinafter required; ~~provided, that such appeal~~  
12 ~~shall~~ under par. (b). An appeal made under this paragraph does not impair the right  
13 of the public to use ~~such~~ the street or highway for the purpose of travel.

14           **(b)** Within ten 10 days after ~~such papers~~ the notice and undertaking are filed  
15 and ~~such payment of the fees is made,~~ the clerk with whom ~~they~~ the notice and  
16 undertaking are filed shall transmit the papers pertaining to the subject matter of  
17 the appeal to the clerk of the circuit court, who shall file them in the clerk of court's  
18 office, ~~and upon such.~~ Upon filing with the clerk of circuit court, the appeal shall be  
19 is considered an action pending in ~~such~~ the circuit court, subject to a change of the  
20 place of trial and an appeal to the supreme court as in other actions. The appeal shall  
21 be entered upon the records by making the ~~party who took it~~ appellant the plaintiff  
22 and the other party the defendant; ~~it.~~

23           **(c)** The appeal shall be tried by a jury unless ~~such mode of trial~~ the jury is  
24 waived, ~~and costs.~~

(d) Costs shall be allowed to the successful party, ~~and if. If the landowner is~~  
~~the successful party shall be, the landowner costs~~ shall be added to the judgment, ~~and~~  
~~if. If the petitioner is the successful party, the costs~~ shall be ~~petitioner~~ be deducted  
therefrom ~~from the judgment.~~

NOTE: Subdivides provision, shortens sentences, replaces word form of numbers with digits and replaces language for greater readability and conformity with current style.

5 (END)